



**GAC**  
Advisors for a Sustainable Future

**U.S. Governmental Advisory Committee**  
*Independent Federal Advisors  
on the North American  
Agreement on Environmental Cooperation*

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The Honorable Stephen L. Johnson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Johnson:

The Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) met on April 18-19, 2007 in Alexandria, Virginia. It is my pleasure to submit to you the following report from our meeting. The report includes advice on seven CEC project proposals, future Article 13 projects, and advice on the 2007 Council Session deliverables.

We look forward to meeting with you at the June Council Session in Morelia, Mexico, as we did in Washington, DC City in 2006. We value the opportunity to fulfill our advisory role in a strengthened manner through personal interaction with you at the Council Sessions. We also take this opportunity to express our gratitude to Judith E. Ayres, Alternate Representative for the United States, for her letter dated February 16, 2007. It is very helpful for us to receive such feedback in response to our deliberations and advisory letters.

The structure of our meeting was different from others in the past. The NAC and GAC dedicated most of their time defining project ideas that could be considered for future CEC projects. The outcomes are projects that stemmed from an open dialogue of the NAC, GAC and a small number of invited guests representing U.S. constituencies. The projects are the result of consensus reached by both committees; we recommend that they be considered for the CEC's Operational Plan (2008-2010) or in the development of the new CEC Strategic Plan.

Our discussions about potential projects were enhanced by the participation of several 'discussants' each of whom represented a constituency that paralleled our own, but typically with a national perspective. On behalf of the GAC I want to express my thanks for the time and thoughtful comments each of these individuals contributed to our deliberations. Several GAC members and EPA attendees mentioned that they believed the involvement of these individuals significantly enhanced our deliberations. Discussants included Christine Eppstein, Executive Project Manager for the Environmental Council of the States; Ken Rosenfeld, Energy, Environment and Natural Resources Police Manager for the National League of Cities; Jim Brooks, International Programs Manager for the League; David Blockstein, Ph.D., Executive Secretary for the Council of Environmental Deans and Directors of the National Council for Science and the Environment; John Pendergrass, Senior Attorney with the Environmental Law Institute, and Carl Bruch, Co-Director of International Programs for the Environmental Law Institute.

These contributing attendees requested to be notified of future advisory committee meetings and expressed an interest in pursuing a stronger relationship with the committees. The charge for our

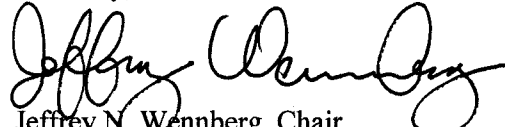
next meeting is expected to include the development of recommendations to promote the awareness and visibility of the CEC among U.S. constituencies. We believe the engagement begun in the meeting reported here has in part served that purpose as well.

We also want to express our appreciation to the invited guests that joined the GAC and NAC meeting representing the CEC, namely Evan Lloyd from the Secretariat and Irene Henriques, JPAC Chair. Also contributing to our deliberations were Janet Bearden with EPA's Office of Enforcement and Compliance Assurance, Russell Smith with the Office of the United States Trade Representative, Fred Stern with the State Department, and Elizabeth English from the National Oceanic & Atmospheric Administration.

We also very much appreciate the participation and briefing from representatives of EPA's Office of International Affairs, Jerry Clifford, Daniel Thompson and Evonne Marzouk,, and their counterparts from the Office of Cooperative Environmental Management, Rafael de León, Mark Joyce and Oscar Carrillo. A good deal of time and effort was invested in the development of the charge and agenda for this meeting, and without excellent collaboration between the people at the highest levels within these two offices I doubt that a successful meeting would have been possible. These people task the committee to deliver useful advice and when we succeed it is due in large part to their outstanding work and persistence. And of course, we deeply appreciate the excellent administrative support we have received from staff at OCEM, particularly Nancy Bradley, Geraldine Brown, Juliana Madrid, and Jannell Ancrum-Young.

In conclusion, we thank you for EPA's continued support of our role in the enhancement of environmental conditions throughout North America and we hope you find our advice useful.

Sincerely,



Jeffrey N. Wennberg, Chair  
Governmental Advisory Committee

cc: Judith Ayres, Assistant Administrator for EPA's Office of International Affairs  
Jerry Clifford, Deputy Assistant Administrator for EPA's Office of International Affairs  
Rafael DeLeon, Director, Office of Cooperative Environmental Management  
Dolores Wesson, Chair, U.S. National Advisory Committee  
Irene Henriques, Chair, Joint Public Advisory Committee  
Patricia Munoz, Chair, Mexican National Advisory Committee  
Members of the U.S. Governmental Advisory Committee

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)

**Advice 2007-1: CEC Project Proposals**

**Advice 2007-1 (May 24, 2007): response to EPA's request on potential projects for consideration by the CEC with emphasis on their relevance to US audiences**

The NAC and GAC were asked by EPA at this meeting to think about potential projects for consideration by the CEC with emphasis on their relevance they may have to US and North American audiences. The committees welcomed this unique opportunity to address new ideas for possible implementation within the CEC, and extends their sincere appreciation to the EPA officials, and invited guests that participated in their deliberations.

The proposals jointly developed by the NAC and GAC are as follows:

- 1) North American Climate Registry
- 2) Renewable Energy Credit Certification Program
- 3) Impact of the Informal Economy on the Environment
- 4) North American Fellowship and Visiting Scholars Programs
- 5) Expanding Sustainable Trade
- 6) Enhancing the Resolution of Citizen-Identified Environmental Problems in North America
- 7) Promoting environmental compliance

***Recommendations. These preliminary proposals are the result of the consensus reached by both the NAC and GAC committees at the meeting; we recommend that the US government explore them as potential projects for future development. The primary criteria we used in formulating them were their strong potential for impact, relevance, and utility to a wide range of audiences in both the U.S. and elsewhere in North America. We hope they will be considered as the basis of an open dialogue on these ideas with the aim of incorporating them as part of the CEC's Operational Plan (2008-2010) if and when funding becomes available, and the appropriate trilateral consensus is completed.***

## 1. COORDINATE AND ASSIST NORTH AMERICAN CLIMATE REGISTRY EFFORTS

**Goal:** To assist the Parties and their sub-national jurisdictions (states, provinces and tribes) contribute to efforts promoting transparency, accountability and the use of best practices in greenhouse gas emissions accounting and reporting.

**Justification:** As momentum grows at the national and sub-national level for both voluntary and mandatory GHG emissions reduction programs, the need for consistency between greenhouse gas reporting programs intensifies, as does the demand for environmental integrity in emissions accounting, reporting and verification. Prior to the formation of The Climate Registry, there were no fewer than three active programs in the U.S. (California, U.S. EPA and U.S. DOE); four Canadian Programs (VCR, CleanAir Canada, Ontario Emissions Trading Registry and Quebec-Ecogeste Registry), and six international or NGO programs including the Chicago Climate Exchange. Recently, The Climate Registry has been incorporated with a Board of Directors consisting of 31 U.S. States and several tribes to unify the California, Northeast and other regional registry efforts. Several Canadian provinces have expressed interest in joining The Climate Registry pending approval by the newly formed Board of Directors.

**Approach to be Used:** The CEC could contribute to existing efforts by facilitating negotiations to develop or adopt a standard continental registry. While The Climate Registry appears to be generating much support, sub-national jurisdictions that have not decided to join might benefit from an independent analysis of the registry options, or from participation in a CEC conference where the benefits, obligations and other issues associated with membership are presented and discussed. Assistance contributed by the CEC to facilitate increased international registry participation is in keeping with the CEC's continental perspective.

**Potential Partners:** The sub-national jurisdictions and the regional organizations they have created would be the primary beneficiaries of this project. Also, national and international corporations have been urging the use of a single standard for measuring, reporting, and registering emissions reduction efforts. Industry leaders on this issue would have an interest in the success of this project. Finally, large NGOs with an interest in climate policy might have an interest in supporting or participating in the project.

**Potential Sources of Funding or Other Forms of Collaboration:** The potential partners listed above may be able to bring resources to the project. In addition, much of the climate change planning at the state, regional and tribal level has been heavily supported by a handful of private foundations, with which the CEC could leverage its funding through the organizations these foundations support.

**Current Project/NAAEC Link:** This project could be a new initiative within the existing project, *Enhancing North American Air Management*. The effort to standardize emissions reporting from cement plants and the effort to promote comparability of air emissions information and report the same in *North American Power Plant Emissions* are models of success that could yield significant benefits if successfully applied to climate change.

## 2. THE CEC RENEWABLE ENERGY CREDIT CERTIFICATION PROGRAM

**Goals:** Through this project, the CEC will develop objective requirements for renewable energy projects and provide a mechanism for certification of Renewable Energy Credits (RECs). These criteria and subsequent certifications could become the standard used to certify projects to generate electricity using renewable energy. With the CEC's objective credibility, this certification could catalyze growth in investment in renewable energy projects and thereby dramatically increase "green" electrical generating capacity.

**Justification:** Existing electrical generating technology using renewable resources is generally not cost-competitive with fossil fuel generation. Sale of RECs (also known as Green Tags) can make renewable energy electrical generation projects viable. Project developers can make their investment economically viable by selling electricity to an electrical utility at the same price as low-cost fossil-fuel generated power, and selling credits to cover the additional cost of the renewable energy. In this way the purchaser of the REC can subsidize renewable energy electrical power generation without necessarily being connected to the same electrical energy grid as the renewable energy generator. This mechanism can help build renewable energy generation capacity anywhere in North America without having to be physically connected to the generator. CEC involvement and certification can provide objective assurance to investors that the credits being purchased are legitimately committed to an increment of renewable energy power generation.

**Approach to be used:** There are two parts to this project. First, the CEC would engage renewable energy experts in defining objective, measurable criteria to judge potential renewable energy projects and credits. This definition should include a method for approving a project and controls to ensure that credits are sold only to the extent of the capacity of the generating facility. The criteria should include a requirement that the energy generator be connected to a large, commercial electrical distribution grid with multiple electrical generators. A periodic follow-up audit program should also be established.

Second, the CEC would establish an office to manage the certification program and sale of certifications. Potential renewable energy project developers would request certification of their project from the CEC and pay a non-refundable fee. If the project is approved, the CEC could manage the sale of the certificates and charge a small handling fee to cover the cost of management and auditing the facilities periodically.

The CEC Renewable Energy Credit Certification office could be self-sufficient with expenses covered by the sale of certifications and credits.

**Potential partners, sources of funding and/or other forms of collaboration:** This project should work with the CEC's Renewable Energy Experts Committee (REEC) to develop the objective criteria for certification. Once the criteria are defined, an office for renewable energy certification should be established with a physical presence in each of the three countries. The office could be self-funded once certifications begin. Alternatively, the CEC could partner with a non-profit organization, such as the Center for Resource Solutions (a San Francisco nonprofit) that administer the "Green-e" certification program.

**Connection to the CEC and/or the NAAEC:** This program is consistent with the existing project called "Promoting the North American Renewable Energy Market." Furthermore, as people are hired and trained to staff the Renewable Energy Certification offices in Mexico, Canada and the United States, the capacity building objective will be advanced.

### 3. IMPACT OF THE INFORMAL ECONOMY ON THE ENVIRONMENT

**Goal:** The goal of this project is to raise awareness in governments and other constituents of how the presence of a large informal economy can impact the environment by restricting the development of critical infrastructure and preventing investment in environmental protection technologies. The project will produce a report that explains this issue to a range of audiences and will conclude with a workshop to present the main findings.

**Justification:** While not directly an "environmental" issue, the presence of a large informal economy is a root cause of many issues that have direct environmental impacts. Through this study, the CEC will develop an environmental rationale for addressing the informal economy. The study will review a number of issues related to the informal economy and explain their impact on the environment, including the absence of business registrations, the lack of clear property rights, the inability to access credit.

**a) Business Registrations:** By definition, an informal business is not registered as a legal entity and does not have a recognized business license to operate. Unregistered businesses exist in all countries but account for the vast majority of businesses in many developing countries due to overly time-consuming and expensive registration procedures. Unregistered business, particularly when they total 80-90% of the overall economy, present a direct barrier to the effective implementation and enforcement of environmental laws and regulations. Additionally, while most unregistered enterprises pay many local fees, most do not appear on state or national tax rolls and thus do not contribute to state or federal budgets that fund environmental agencies or inspectors.

**b) Property Rights:** Informal economies are also characterized by the lack of clear property rights for both business enterprises and individuals (these two categories overlap in the case of the self-employed - a large percentage of the informal economy). The lack of clear property rights has prevented the use of property taxes as a means to fund critical local infrastructure, including fresh water delivery, wastewater treatment, and electricity distribution. The environmental impacts that result include the poor drinking water, water pollution, and air pollution.

**c) Access to Credit:** The lack of clear property rights also limits access to credit for individuals and business enterprises since these groups are prevented from using their most valuable asset – their land and buildings – as collateral to secure a loan. In addition to the negative impacts this has for economic development, it has a direct environmental impact by inhibiting investment in newer, more energy and resource efficient equipment or in direct environmental protection technologies.

**Approach to be used:** The primary approach to developing the report will be desktop research. The report could be produced as a CEC (Council) publication or as a report of the Executive Director under Article 13. As an awareness-raising report, it will be relatively short and therefore will take 3-6 months to complete and publish.

In developing the report, the CEC will review existing literature on the informal economy to identify the primary effects on the above issues, as well as others. It will then assess where the identified effects result in environmental impacts. The report will then prioritize action that needs to be taken to address the root cause of the environmental impact. The project will also include a single workshop to announce the release of the report and present the major findings.

**Potential Partners, Sources of Funding and/or Other Forms of Collaboration:** Potential partners for the project and/or sources of information include the World Bank, the International Finance Corporation, the

Organization for Economic Cooperation and Development, and the Institute for Liberty and Democracy (Hernando de Soto). The project should also include members of the CEC Enforcement Working Group.

***Connection to CEC / NAAEC:*** The proposed project is most closely related to the CEC projects on "Harnessing Market Forces for Sustainability" and "Trade and the Enforcement of Environmental Laws," but covers issues that the CEC has not addressed directly to date.



#### **4. The CEC North American Fellowship and Visiting Scholars Programs**

**Goals:** This proposal consists of two parallel programs: one for graduate students and another for visiting scholars. The goals of the fellows program are: 1) to provide graduate students in academic institutions throughout North America with first-hand professional experience in science, policy, and law at governmental institutions of Canada, Mexico, the US; and bring their knowledge to bear on issues related to the North American Agreement on Environmental Cooperation (NAAEC) and the CEC. Similarly, the goal of the visiting scholars program is to provide post-graduate and/or post-doctoral researchers and professors with opportunities to conduct research at North American governmental agencies within the scope of the NAAEC and the CEC. Students and visiting scholars will be selected competitively from Canada, Mexico and the US for their expertise and proven interest in environmental and/or trade issues.

**Justification:** The academic community of North America has much to contribute to the environment and trade arena, and has yet to be engaged in activities lead by the CEC Secretariat and the parties — Mexico, Canada and the US. The fellows and scholars program will provide a mechanism for both students and investigators to work at governmental institutions in North America by matching students and scholars who have demonstrated interest and expertise in environment and/or trade with 'host' offices. At the same time, the program will provide the 'host' agencies with students and scholars (scientists, policy analysts and attorneys...) with top-quality expertise in a wide range of disciplines and direct access to current academic research and technological developments. Areas of study and expertise for fellows and scholars alike should include any issues relevant to the CEC work, and/or the NAAEC. Potential offices might include: the CEC's headquarters in Montreal, USEPA in Washington DC, Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT) in Mexico City, and Environment Canada in Quebec. This program will foster collaborations between academic institutions and governmental agencies, bring cutting-edge science, technology and knowledge into the environmental agencies of the three parties, bridge the gap between the academic and policy communities, and provide an invaluable training opportunity for future the environment and trade leaders of North America.

**Approach to be used:** On an annual basis, a competitive selection process open to academic institutions from all three countries will be held by the Secretariat for both the fellows and the visiting scholars program. Criteria for selection might include academic achievement, social service and commitment to environmental/trade issues, robust knowledge of at least two of the three languages of the CEC, or of a native North American language spoken by any First Nation in North America. Applicants should be selected from all three counties with equal participation. Placement should also be distributed among the three parties' institutions to the degree possible. Host agencies and offices would be solicited in advance and must express a need for a student or scholar to address a stated need, and a commitment to provide a valuable career or research opportunity. A rotation at an agency in a foreign country, in addition to spending time in an assignment in the country of origin, might be explored as an avenue to create a better understanding of the institutional frameworks and environment/trade challenges of all three parties. Emphasis on placing individuals in counties other than their own should create a better understanding of environmental and trade-related institutions throughout North America.

**Potential partners, sources of funding and/or other forms of collaboration:** Host offices in some cases may be approached as sources of matching funds for the fellows and scholars program. Partnerships with private foundations and industries to support a portion of the program or a set number of students or scholars should be explored by the Secretariat. Similar programs exist in the US that might serve as good models as the Secretariat considers the implementation of this program. Some of these examples include the National Sea Grant Fellowship Program administered by the National Oceanic and Atmospheric Administration (NOAA), the Presidential Management Fellows Program administered by the Office of Personnel Management, and the Science and Technology Fellows Program of the American Association for the Advancement of Science (AAAS).



***Connection to CEC and/or the NAAEC:*** This program is designed to share capacity between the academic and governmental sectors of the three countries. It falls within the core mission of the CEC and can be easily targeted to address different areas of need over time (e.g., air quality, environmental indicators, trade and its effects.)

## 5. EXPANDING SUSTAINABLE TRADE

**Goal:** It is proposed that the CEC undertake a comprehensive study of further opportunities for "sustainable trade", especially in Mexico. The goal of this project is two-fold. First, it will identify and assess national laws and policies that either impose environmental harm or promote environmental benefits to enhanced trade. Second, it will identify emerging products and markets that hold promise and that may be used to encourage economic development and sustainable trade. The desired end result of the assessment is to include these emerging products and markets in the CEC portfolio.

**Justification:** It is well-documented that Mexico's natural resources are being severely overtapped in some cases (fisheries, forests, grasslands and water to name a few), and that a community's natural resources are often sacrificed in favor of unsustainable economic development, or development that does not take into account sufficiently the environmental impact of its operations (e.g. coastal tourism). While the impacts of NAFTA in Mexico (in terms of both economic benefit and disadvantages) are complex, small farmers, ejidatarios from rural communities, have in many cases been further disadvantaged by NAFTA, adding to the exodus of workers in search of jobs in the United States.

Immigration issues, Mexico's struggling economy coupled with its rich biodiversity, and the collective responsibility of the CEC parties to engage in development that preserves rather than exploits ecocapital are all reasons why this type of assessment should be carried out. Such an assessment might also be conducted with contributions from visiting scholars through the CEC North American Fellows and Scholars Program proposed under section.

**Approach to be used:** The project would identify national laws and policies that impact the environment, with the goal of promoting laws and policies that benefit it and discouraging laws and policies that harm it, in the context of both existing and potential trade relations among the parties. As an example, to the extent that fisheries subsidies are harming the environment, the CEC could work collaboratively with the parties to eliminate them. The North American Regional Action Plans developed to assess and reduce the risks from certain chemicals, such as lindane and DDT should be explored as a model that might be applied to fisheries management and other environmental challenges. Similarly, where laws and policies benefit the environment and/or the conservation of natural resources, such as laws that promote the use of renewable energy, the CEC should promote them to other communities or parties.

A second goal of the project is an assessment aimed at identifying emerging products and markets that may be used to advance economic development and also promote the conservation of natural resources in sensitive ecological zones, or zones where conservation-based development seems like the most beneficial strategy to pursue (e.g. shade-grown coffee and the eco-palm projects).

The project would involve research on economic trends, existing community development projects, and interviews with various development, aid agencies, and conservation NGOs, as well as the business community and lending institutions, who may be called upon to help set up seed funding, and revolving or low-interest loans. The study should also examine any existing controversies with regard to sustainability certification programs and seek to ensure that adequate mechanisms for measuring and achieving the desired level of sustainability are in place.

**Potential partners, sources of funding and/or other forms of collaboration:** Such a project should attract a number of potential partners, including academic institutions, World Trade Organization (WTO), Organization for Economic Co-operation and Development (OECD), United Nations Environment Program (UNEP), and United Nations Conference on Trade and Development (UNCED), as well as NGOs and business organizations looking for entrepreneurial opportunities.

**Connection to CEC and/or NAAEC:** Presently, the CEC Operational Plan contains six projects under the Trade and Environment Pillar, ranging from promoting the North American renewable energy market to an ongoing environmental assessment of NAFTA. The portfolio of projects and accomplishments to date is

both comprehensive and impressive. Some projects are focused on specific negative impacts of freer trade while others point to the possible harmonization of or synergy between trade and the environment. This project relates directly to Project 12 in the current CEC Operational Plan.

## **6. ENHANCING THE RESOLUTION OF CITIZEN-IDENTIFIED ENVIRONMENTAL PROBLEMS IN NORTH AMERICA**

**Goal:** A project to assist the Parties and citizens in more effectively and efficiently addressing immediate and specific environmental problems in North America. The project envisions a "problem-solving" function for the CEC to resolve environmental concerns raised by citizens. This function is distinct from Article 14's process for submissions on enforcement matters. Indeed, this problem-solving function is intended to avoid Article 14 submissions or to address issues that may not relate to failures to enforce environmental law effectively. The goal is not to establish a process for assigning fault, but rather to create a process for resolving the environmental problem. In addition, the process is not intended to pressure the Parties to act. On the contrary, it would provide an avenue for Parties to address concerns before these are highlighted publicly. This project would also help achieve the Council's function to "promote and facilitate cooperation between the Parties with respect to environmental matters." (Article 10(1)(f)).

**Justification:** Despite the objective of the NAAEC to "improve the environment...for the well-being of present and future generations," and the existence of mechanisms under the NAAEC designed to draw attention to specific environmental concerns in North America, many significant environmental concerns remain unaddressed. In addition, existing legal mechanisms for addressing environmental problems are time consuming, expensive and often not effective for securing results. The CEC's role in assisting the Parties' efforts to address these concerns would be enhanced by using existing mechanisms and authorities to secure a stronger "problem-solving" function for the CEC.

**Approach to be used:** This project would require the Parties to consider and implement a stronger problem-solving function for the CEC within the existing provisions of the NAAEC. Pursuant to Article 10(1)(b), which authorizes the Council to 'develop recommendations on the further elaboration' of the NAAEC, the Parties would elaborate a process for citizens to seek resolution of specific environmental problems through a new, non-adversarial process. The recommendation would provide criteria pursuant to which the Secretariat would determine whether particular requests should proceed through the process, including whether the Secretariat would be able to facilitate resolution of the problem and whether resolution of the problem would further the goals of the NAAEC.

For requests that meet the criteria, the Secretariat would work with the requestors and the Party or Parties concerned to resolve the issue. The Secretariat's functions would vary, depending on the nature of the issue. It could seek to identify technology, information, financing, or other resources that would assist resolution of the problem. (Those resources could be available through governments, businesses, academic institutions, non-profit institutions, international organizations, etc.) In some cases, it might simply pass on such information to the requestors; in others, it might facilitate direct contacts between the requestors and other interested parties; in still others, it might prepare a short report outlining an approach that all interested parties might consider taking. Finally, in some cases it might determine after further consideration that it cannot assist with resolution of the problem.

Several such approaches to problem-solving exist, particularly in the context of international financial institution activities. Some examples include the Office of Accountability for the U.S. Overseas Private Investment Corporation (OPIC), the Compliance Advisor Ombudsman for the International Finance Corporation, among others. A Preliminary Task of the project would be to assess the procedures of these institutions to determine whether any particular features would be valuable within the context of the NAAEC.

**Potential partners, sources of funding and/or other forms of collaboration:** A range of individuals and institutions have the technical expertise to partner with the CEC to develop this project. In Canada, the Sierra Legal Defence Fund, West Coast Environmental Law, and Stewart Elgie (University of Ottawa) are potential partners. In Mexico, the Mexican Center for Environmental Law, and Instituto de Derecho

Ambiental, A.C. (IDEA) are some examples. The Center for International Environmental Law, the International Environmental Law Project, Earthjustice, John Knox, and David Markell are possibilities in the United States.

**Connection to CEC/NAAEC:** This project fits within the Capacity Building pillar of the CEC. Depending on the range of issues brought to the attention of the CEC, the project could help build the capacity of citizens as well as officials at all levels of government. Additionally, this project will promote the CEC's contributions towards protecting the environment thereby increasing its visibility. The GAC and NAC recommend this project as a model for building partnerships, avoiding litigious situations, and resolving problems.

## 7. PROMOTING ENVIRONMENTAL COMPLIANCE

**Goal:** The three NAAEC Parties use an array of judicial, quasi-judicial, and administrative proceedings to promote compliance with environmental law. These include administrative compliance orders, negotiated settlements, and citizen suits, among others, as well as mandatory and voluntary mechanisms. Some jurisdictions may not be aware that certain compliance mechanisms have been tried elsewhere in North America. In addition, it may not be known which of these strategies are effective and in which contexts they are effective. This project seeks to identify different strategies for environmental compliance and ascertain when certain strategies help achieve compliance with environmental laws. The project will also disseminate the results of this work widely within the North American region. In so doing, the project will provide a more sophisticated understanding of cutting-edge ways of promoting compliance.

**Justification:** A central goal of the NAAEC is to promote pollution prevention policies and practices and enhance compliance with, and enforcement of, environmental laws and regulations. To accomplish these goals, Article 5(2) requires each Party to ensure that administrative, quasi-judicial, and judicial proceedings are available to sanction and remedy violations of its environmental laws. Article 6 requires each Party to ensure that interested persons are allowed to request the Party's competent authorities to investigate alleged violations of environmental law and persons with a legally recognized interest in a particular matter must have appropriate access to administrative, quasi-judicial, and judicial proceedings for the enforcement of environmental law. Article 7 requires each Party to ensure that its administrative, quasi-judicial, and judicial proceedings are fair, open and equitable. The overall thrust of Articles 5 through 7 is to create an effective compliance regime that, under certain circumstances, involves the public.

**Approach to be used:** This project will identify the types of administrative, quasi-judicial, and judicial proceedings that are available to government officials and citizens in each of the three Parties to promote compliance with environmental laws. It will also assess how these proceedings implement the requirements of Article 7. The project will then identify the situations in which one type of proceeding may be more appropriate than in another (e.g., availability of resources, type of regulated facility). The project could also compile reasons officials and citizens prefer one type of proceeding over another when seeking the resolution of an environmental dispute. For example, does one proceeding yield preferred outcomes, such as monetary sanctions or injunctive relief, or is a proceeding preferred because it is viewed as fair (e.g., citizens have confidence in the credibility of the process)?

This project will help policy makers understand the available tools for achieving environmental compliance and when it is appropriate to use those tools. The project will also enable policy makers to identify particular features of processes that are likely to be particularly important for achieving compliance with environmental law. As a consequence, the project will help governments design processes that better meet the goals of environmental compliance.

**Potential partners, sources of funding and/or other forms of collaboration:** A large range of individuals, academic institutions, and environmental organizations have the technical expertise to partner with the CEC to develop this project. The following list is just a small sample: In Canada: Sierra Legal Defence Fund, West Coast Environmental Law, Stewart Elgie (University of Ottawa), among others; In Mexico: the Mexican Center for Environmental Law, Instituto de Derecho Ambiental, A.C. (IDEA), and others; In the United States: the Center for International Environmental Law, the International Environmental Law Project, Earthjustice, John Knox, David Markell, and Tom Tyler, among others.

**Connection to CEC/NAAEC:** The CEC has already initiated the Enforcement and Compliance Cooperation Program, which provides ongoing support to the North American Working Group on Enforcement and Compliance Cooperation (EWG) in examining issues related to shared enforcement and compliance challenges. The program addresses North American regional enforcement issues, enforcement and compliance capacity building issues, and provides in-depth information and analysis on the Parties' enforcement and compliance promotion activities.

The proposed project builds on this work by reviewing compliance mechanisms from a national perspective rather than a regional perspective. The results of the project should be valuable for authorities at the local, state/provincial, and national level.



Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)

**Advice 2007-2: Future Article 13 Projects**

During our deliberations on potential projects a number of ideas were discussed that our committee believes fall within the CEC's Article 13 reporting mission. Rather than develop a full project proposal, committee members decided to list the concepts for possible future Article 13 consideration.

Traditionally Article 13 reports have been ambitious projects in their own right. The committee believes that the scope and rigor typically applied will continue to serve the CEC and its constituents well, however not all worthy investigative projects require or deserve this level of effort. In making these recommendations the GAC recognizes that many of these suggestions might be more effectively addressed through something like an 'Article 13 lite' level of effort.

The report topics and a brief discussion follow:

- a. **Citizen Involvement and Protection of their Interests through Environmental Laws and Administrative Processes.** The committees expressed interest in studying the laws, standards and practices of the three nations as they pertain to citizen notification and involvement in environmental decisions.
- b. **Rectify Tire Disposal along the Mexico-United States Border.** The long-standing practice of exporting waste tires to Mexico to be burned should be studied and solutions sought. The impetus for this trade is economic, but the consequences represent a serious environmental and public health threat. Committee members question whether there are incentives, assistance or regulatory means of replacing this practice with one that is profitable for the handlers and environmentally benign.
- c. **Relocation of High-emission and out-of Compliance Vehicles.** This problem is related to (b) above. Exporting out-of-compliance vehicles from the U.S. so that they can continue to be legally operated for years longer defeats the purpose of fleet turnover to improve emissions reductions.
- d. **Transboundary Surface Water and Groundwater Issues.** The issue of current and future access to sufficient water of good quality at or near the border is only going to grow as competition for the resource increases. This has been flagged by the committees as a major looming issue. Although the committee recognizes that the matter is complicated and in Texas a treaty with Mexico and state legislation (Senate Bills 1 and 2) are among some of the numerous controlling factors, the GAC believes that the importance of the problem warrants being underscored.
- e. **Status of Hazardous Material Transportation.** The committees are aware that this issue is being studied at EPA but a CEC review and analysis of those findings and consideration of any recommendations for programmatic response to the problem would be helpful.
- f. **Promotion of Sustainable Agriculture—The next step in the “Green Palms” Movement.** The concept here is to build upon the successful shade grown coffee and ‘green palms’ project by seeking, identifying and proposing means of encouraging the use of sustainable agriculture for other export crops.

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)

**Advice 2007-3: CEC Council Session Deliverables**

On the second day the committees briefly discussed the draft list of deliverables for the June Council Session.

**Increased Visibility and Public Engagement.** As a general comment, the Committee acknowledges that private time among the ministers is no doubt necessary; however, the Committee also expressed that it would be best to keep this to a minimum. There is a general desire for increased public interest in and awareness of the CEC and its projects. When the ministers meet in-camera they appear to contradict their expressed desire for greater public engagement.

**Performance Measures and Indicators.** There is much interest in the State of the Environment Report, but we believe that more attention needs to be paid to the development of 'indicators' that can be measured and documented. Early adoption of an 'indicators' proposal could significantly enhance interest in, and support for, the report.

**Green Buildings Update.** There was broad support for the concept of updating the ministers regarding the Article 13 report on Green Buildings. We suggest that representatives of the building industry, the U.S. Green Building Council and others as appropriate be invited to make presentations to the ministers.

**Conservation Strategies as related to the Vaquita.** The GAC has concern for "Conserving Species Through Market-Based Strategies." Some species are endangered due to highly complex economic, social and political factors. An example discussed was the Vaquita issue in the upper Gulf of California. This is an extremely complex issue where the loss of the Vaquita is an indicator of larger, more complex problems of the upper Gulf of California. Those members most familiar with the issue believed that a market approach would not work in this case. It is recommended that if the Council takes this matter up, key players in the issues of the upper Gulf of California should be invited.

**Approach to Indigenous Peoples versus Tribal Governments.** On the effort to enhance the engagement of indigenous peoples or communities, Lisa Gover, Tribal Administrator for the Campo Band of Kumeyaay Indians in California observed that there is a distinction between engaging indigenous people and tribal governments. From time to time the interest of the tribal government may not be the same as the people. For people to become engaged the activities of the CEC must be relevant to their lives. The status of tribal governments in Mexico, which does not recognize these governments, is different from their status in the U.S. The GAC recommends that any consideration of this matter recognize the challenges created by the different legal status afforded tribes by these two countries.

**Sustainable Community Fund.** There was broad support for the return of the NAEFEC, or some new version of it. The general recommendation is to promote a level of flexibility that encourages interesting new ideas. Toward this end it is suggested that fundable proposals not be restricted to the current fifteen projects but tied more loosely to the three pillars.

**Megatrend Studies.** The proposed Megatrend study was both supported and questioned by individual committee members. There was support for "scenario planning" and analysis as an alternative; however, there were two suggestions for 'megatrend' study consideration should it be pursued. The first was water quality, quantity and access, which the GAC believes will only grow in urgency in the years ahead. The second was on the unintended consequences of nanotechnology.

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)  
**Advice 2007-4: Other**

**GAC – Only Discussion.** During our GAC-only discussion several suggestions were offered concerning the awareness of the CEC and its programs.

**Website Update.** Portions of the CEC web site are seriously out of date. For example, there is no mention of the three pillars on the 'who we are' page, indicating that this information has not been updated in several years. It is not reasonable to expect progress in understanding of and appreciation for the CEC's efforts if their own web site is not kept current. Once the web site is updated, we suggest that the organizations that provided 'discussants' at the meeting be asked to offer a link from their site to the CEC's.

**Market Presentation.** We recommend that the CEC produce an up-to-date 'canned' presentation, such as a PowerPoint program, that could be used by members of GAC and NAC to be shared at gatherings of peer associations and other groups. This would facilitate the 'marketing' goal of raising awareness of the CEC among U.S. constituencies.

**Distance Learning, Training Media and Partner Organizations.** We also question whether the CEC is taking full advantage of the new media to make their reports and training more accessible to the public. The work on invasive species, ozone depletion and endangered species has great value to a broader audience than has thus far been attracted. We understand that some of these opportunities, such as distance learning, would potentially challenge existing resource limitations. But we also believe that if there is significant potential such investments might be seen as worthy of support from partner organizations.

**North American Development Bank Opportunities.** The GAC suggests that there may be an opportunity to access some of the underutilized North American Development Bank funds to support some of the identified needs along the U.S.-Mexican border. For example, a long-standing problem exists with the export of waste tires to Mexico, where some are burned without appropriate pollution controls (see item 7b under 'Future Article 13 Projects'). Could the NAD Bank fund a profitable project to reuse or dispose of these tires using sound environmental practices? Are there other problems that the CEC could analyze and the NAD Bank finance?

**Limitrophe Project.** Colin Soto, representing the Cocopah Tribe in Arizona, described the co-benefits of the development of a wildlife refuge in the border area between Arizona, California and Mexico, known as the Limitrophe Project. The Colorado River International Conservation (CRICA) is a project initiated by the Cocopah Tribe in an attempt to save the last vestige of the lower Colorado River as it leaves the United States. The River is the living history of the Cocopah Nation. The water once supported the fish and fowl that were incorporated into the healthy food chain, supported the trees for homes and cultural ceremonies, and provided a highway for trade from Baja California to Utah. Today, the Colorado River has no flowing water as it enters the West Cocopah Reservation. What sustains the limitrophe is the ground water from both sides of the border. The major shareholders of this project come from Sonora, Mexico, Baja California, Mexico, the Quechan Nation of California, the Cocopahs of Arizona and government entities from both states including the U.S. government. With the proper leadership and support, the limitrophe project could be a showcase of international concern for the environment. We request that you consider asking the CEC to become actively involved in the discussions on this project.

**Transboundary Environmental Impact Assessment.** We also have an interest in the Transboundary Environmental Impact Assessment (TEIA) being undertaken by the Security and Prosperity Partnership of

North America. We recommend that the CEC closely monitor and even consider involvement in this effort.

**Involvement of Indigenous Peoples.** Finally, we commend the dedication of the Deputy Assistant Administrator Jerry Clifford for his innovative concept of hosting a Conference on Environment and Health that focuses on indigenous peoples. We encourage the CEC to involve the active participation by Mexican indigenous peoples, First Nations of Canada, and Tribes in the United States. We recommend that funding be provided for some travel for those who otherwise would not be able to attend and to work with the border authorities to ensure that attendees are permitted passage for attendance and participation at the Conference.